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SUPREME COURT OF THE UNITED STATES.

No. 65.

MARTIN A. LEA, MUNROE RABETAILLE, AND CHARLES C. LANGDON, APPELLANTS,

vs.

ENOCH S. KELLY.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF ALABAMA.

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Langtree & O'Sullivan, Print.—1840.

THE UNITED STATES OF AMERICA,
State of Alabama.

To the Honorable William Crawford, one of the Judges of the circuit court of the United States, for the southern district of Alabama.

The petition of Martin A. Lea, Monroe Robetaille, and Charles C. Langdon, respectfully sheweth to your honor, that a decree was rendered at the circuit court of the United States aforesaid, in a suit in chancery, in which Enoch S. Kelly is complainant, and your petitioners are defendants; they pray an appeal from said decree to the Supreme Court of the United States. The receipt of the clerk is herewith attached.

GORDON, CAMPBELL, & CHANDLER,
For Petitioners.

May 8th, 1839.

I approve of the security of two hundred and fifty dollars, deposited with the clerk, to respond to costs.

WM. CRAWFORD, *Judge.*

I, David Files, clerk of the said court, certify that the defendants have deposited two hundred and fifty dollars with me, to abide the event of the said appeal, and subject to the order and decree of the court on the same.

DAVID FILES, *C. C. C., S. D. Ala.*

Let an appeal be granted agreeably to the prayer of the petitioners.

WM. CRAWFORD, *Judge.*

I, David Files, clerk of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, do hereby certify that the above is a true copy of the original, filed in my office.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand, and affixed the seal of said circuit court, this eighth day of May, in the year of our Lord one thousand eight hundred and thirty-nine.

DAVID FILES, *C. C. C., S. D. Ala.*

THE UNITED STATES OF AMERICA,
Southern District of Alabama.

The President of the United States to the marshal of the said district:

Whereas, a decree was rendered in the circuit court of the United States for the southern district of Alabama, in which Enoch S. Kelly is complainant, and Monroe Robetaille, Martin A. Lea, and Charles

C. Langdon, are defendants; and whereas the defendants have prayed an appeal to the Supreme Court of the United States, to be holden on the second Monday of January next, at Washington city:

We command you to summon the said Enoch S. Kelly to appear before the said court, there to do and perform what the court may decree in this behalf.

Witness, Wm. Crawford, one of the judges of the circuit court of the United States for the southern district of Alabama, this 2d Monday of April, 1839.

WM. CRAWFORD, *Judge, &c.*

Issued May, 1839.

THE UNITED STATES OF AMERICA,
Southern District of Alabama.

The President of the United States to the Marshal of said district—greeting:

Whereas, in a certain suit in chancery, commenced in the circuit court of the United States, holden in and for the said district, by Enoch S. Kelly, complainant, against Martin A. Lea, Charles C. Langdon, and Monroe Robetaille, defendants, in which a decree has been rendered at the spring term, A. D. 1839, an appeal has been prayed for to the Supreme Court of the United States, to be holden at Washington city, on the second Monday of January next. These are to command you to cite the said Enoch S. Kelly, personally, to be and appear at the said court, then and there to hear errors assigned on behalf of the said defendants, and to do and abide, whatsoever the said court may award in this behalf—hereof fail not.

Witness, the Honorable Wm. Crawford, one of the judges of the circuit court of the United States, for the southern district of Alabama, this second Monday of April, 1839, and of American Independence the 63d year.

WM. CRAWFORD.

Issued 29th July, 1839.

We accept service of the within, this 17th August, 1839.

DUNN & LESESNE.

CIRCUIT COURT OF THE UNITED STATES,
For the Ninth Judicial Circuit, Southern District of Alabama.

ENOCH S. KELLY
vs.
LEA & LANGDON, et al.

Know all men by these presents, that we, Martin A. Lea, Charles C. Langdon, Stephen V. V. Schuyler and David McCollough, are held and firmly bound unto Enoch S. Kelly, in the sum of two hundred and fifty dollars, for the payment of which, well and truly to be made to the said Enoch S. Kelly, his heirs, executors or administrators, we bind ourselves and each of us, our, and each of our

heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this first day of May, in the year of our Lord one thousand eight hundred and thirty-nine.

Whereas, the above-bound Martin A. Lea has prosecuted his writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, by the circuit court of the United States for the ninth judicial circuit, southern district of Alabama:

Now, therefore, the condition of the above obligation is such, that if the above-bound Martin A. Lea shall prosecute his said writ of error to effect, and answer all costs and damages, if he shall fail to make good his plea, then this obligation to be null and void, otherwise to be and remain in full force and effect.

Given under our hands and seals, the day and date first above written.

MARTIN A. LEA, [SEAL.]
CHAS. C. LANGDON, [SEAL.]
S. V. V. SCHUYLER, [SEAL.]
DAVID McCULLOUGH. [SEAL.]

Signed, sealed and delivered in presence of
E. C. SOUTHWORTH.

[SEAL.] I, David Files, clerk of the circuit court of the United States, for the ninth judicial circuit and southern district of Alabama, do hereby certify, that the above is a true copy of the original bond on file in my office, in the above case.

Witness my hand and the seal of said circuit court, this first day of May, in the year of our Lord one thousand eight hundred and thirty-nine.

DAVID FILES,
Clerk C. C. So. Dist. Ala.

Pleas had before the Hon. the Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama, exercising chancery jurisdiction. At a term thereof, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-nine, before his honor, William Crawford, one of the judges of said court.

Be it remembered, that heretofore, to wit, on the seventh day of February, in the year of our Lord one thousand eight hundred and thirty-nine, Enoch S. Kelly filed in the clerk's office of said court his bill of complaint against Martin A. Lea, Charles C. Langdon and Monroe Robetaille, in the words and figures following, to wit:

Messrs. GORDON, CAMPBELL AND CHANDLER:

Gentlemen—Please to take notice, that on Monday, the 4th of February next, we shall apply to the Hon. William Crawford, asso-

ciate judge of the United States circuit court for the southern district of Alabama, for a writ of injunction in the case of Dameron & Co. vs. Wm. D. Scull, George W. Botts and Enoch S. Kelly.

DUNN & LESESNE,
Att'ys for Kelly.

Mobile, January 31st, 1839.

We accept service of the above notice, this 31st January, 1839.
GORDON, CAMPBELL & CHANDLER.

Bill.

ENOCH S. KELLY
vs.
LEA & LANGDON, etc.

To the Honorable the Judges of the Circuit Court of the United States, for the Southern District of Alabama, exercising Chancery Jurisdiction:

Humbly complaining, sheweth unto your honor, your orator, Enoch S. Kelly, that on the first day of April, A. D. eighteen hundred and thirty-six, your orator and one George W. Botts, at the request of one William D. Scull, executed with said Scull a joint and sevaral note, whereof the following is in substance a copy:

Wilcox County, Ala., April 1st, 1836.

"Eleven months after date, we, William D. Scull, George W. Botts and Enoch S. Kelly, jointly and severally promise to pay Andrew Armstrong, cashier, or bearer, dollars, for value received, negotiable and payable at the Bank of Mobile.
Credit,

(Signed) WM. D. SCULL,
GEO. W. BOTTS,
ENOCH S. KELLY.

WM. D. SCULL,
GEO. W. BOTTS,
ENOCH S. KELLY.

Your orator further showeth, that the said note was strictly an accommodation note, made and signed by your orator, at the request of said Scull, to be discounted for his sole benefit, in the said bank, where the same was made negotiable and payable, and was drawn in the form required by the said bank, for country paper presented for discount.

Your orator further sheweth, that the amount of the said note was left blank at the time of the execution thereof, that a less sum might be inserted therein, provided the said bank refused to discount the same for the sum of two thousand dollars, which sum it was ex-

pressly stipulated and agreed between the said Scull and your orator, that the said note should not exceed. And your orator further showeth, and expressly charges, that it was on the express condition, that the said note should not exceed the sum of two thousand dollars, that your orator consented to sign the same, for the accommodation of the said Scull. Your orator further sheweth, that the direction of credit on the left hand corner of the said note was also left blank, that the same might be filled with the name of the person or persons who should present the said note at the said bank for discount, and to enable the persons whose names were inserted for this purpose to draw the proceeds of said note from said bank, in case said note should be discounted. Your orator further showeth, that the said note, soon after the execution thereof, was delivered by the said George W. Botts, at the request of said Scull, to a mercantile firm, in the city of Mobile, using the name and style of Lea & Langdon, and composed of Martin A. Lea and Charles C. Langdon, whom your orator prays may be made parties defendants to this bill, with the request, that they should present the said note for discount at the said bank for the said Scull, and to hold the proceeds, if discounted, for the said Scull.

Your orator further sheweth, that the said firm was particularly selected, because they were the factors of said George W. Botts, and because the said Martin A. Lea being at the time a director in said bank, it was believed that he could and would facilitate the discount of said note. Your orator further sheweth and expressly charges, that said Lea & Langdon were expressly and distinctly informed, when said note was so delivered to them, for what purpose and for whose benefit the said note was made, and that the blank was left in amount, to be filled for a sum not exceeding two thousand dollars, and further, to hold the proceeds of said note if discounted, for the benefit of the said Scull. Your orator further sheweth, that shortly after the said note had been so delivered to said Lea & Langdon, and sometime in May, 1836, the said George W. Botts, as agent of said Scull, called at the office of business of the said Lea & Langdon, to learn whether the said note had been discounted, and was informed by the said Lea that the said note had been presented for discount, but had not been discounted, in consequence of its having been delivered to said Lea & Langdon too late; whereas your orator expressly charges, that said note never was presented for discount by said Lea & Langdon or any other firm.

Your orator further sheweth, that said Botts, on being informed that the said note had not been discounted, requested said Lea and Langdon to re-deliver the same to him, which they several times promised said Botts to do, but put him off with various pretences, sometimes alleging that the said note had been left at the said bank, and at other times that the same had been mislaid, but solemnly promising and assuring the said Botts that they would endeavour to find the said note and would return the same to him as soon as it was found; and your orator expressly charges, that on no occasion when the said Botts

called for the said note as aforesaid, or at any previous time, did said Lea and Langdon pretend to have any claim to said note, or any right to retain the same, or to hold any of the parties thereto responsible thereon.

Your orator further sheweth, that at the time the said note was so delivered to said Lea and Langdon, nor at any time afterwards, was the said William D. Scull, your orator, or the said Botts at all indebted to the said Lea and Langdon; but afterwards and between the time when said note was so delivered to them and the time when said note matured, the indebtedness of the said Botts to the said Lea and Langdon became very considerable, in consequence of which the said Lea and Langdon obtained from the said Botts a deed of trust of certain negroes therein mentioned, to secure the whole indebtedness of the said Botts to said Lea and Langdon, the said Botts having at that time made other arrangements for paying or extinguishing the remainder of his said indebtedness over and above the amount secured by said deed, a copy of which deed of trust is hereto annexed marked as exhibit A, and prayed to be taken as part of this bill.

Your orator further sheweth, that the said Lea and Langdon failed to have the said deed recorded in the time limited by law, in consequence of which the said Lea and Langdon lost the lien they had acquired under and by virtue of said deed, much to the wrong and injury of your orator in the premises, if, indeed, your orator was bound or could be held liable for the said note.

Your orator further sheweth *that*, and charges that said Lea and Langdon now assign as a reason for retaining the said note and holding the makers thereof liable thereon, that he the said Lea had neglected to record the said deed in the time limited by law, whereas your orator expressly charges that the said Lea and Langdon failed to record the said deed, knowingly and wilfully, and retained the said note in place of said deed for no other reason than because they believed it a better security than the said deed.

And your orator further sheweth and charges, that at the time the said Botts executed said deed of trust, he knew nothing of the said note being in the possession of said Lea and Langdon, or that any other person held the same as valid against him or any other party thereto; and that said Lea, who procured said Botts to execute said deed, carefully concealed from him the fact that said Lea and Langdon held the said note; and your orator expressly charges, that said Lea and Langdon at that time, and at the time when said Botts called on them as before alleged for said note, either did not know that the said note was in their possession, or that fully knowing where said note was, fraudulently retained the same and converted the same to their own use, pretending and falsely alleging the same could not be found, for the purpose of holding the said note as a security against the then existing and further liabilities of said Botts to them.

Your orator further sheweth, that he was entirely ignorant that the said note was held by any person as a valid and binding instrument against any party thereto, until the deputy marshal of this honorable court levied an execution on your orator's property.

And your orator further sheweth, that on examining the said execution and the judgment on which the same was issued, your orator discovered for the first time that said judgment had been recovered at the last April term of this honorable court, in a suit brought in the name of Augustus L. M. Dameron and Monroe Robetaille, partners, using the name and style of Dameron & Co., of the State of Louisiana, and that the said suit had been brought on the said note made by the said William D. Scull, George W. Botts, and your orator; that the blank left for the amount in said note had been filled with the sum of five thousand dollars, and the blank designation of the person to be credited on said note with the names of Lea and Langdon; and your orator expressly charges, that the said blank originally left for the amount of said note was so filled by the said Lea and Langdon with the sum of five thousand dollars, fraudulently and with a full and distinct knowledge of the amount for which said note was originally designed and drawn, and without any authority so to fill the same from any of the parties thereto.

Your orator further sheweth, that since the institution of said suit, said Augustus L. M. Dameron departed this life, and that said Robetaille is the surviving partner of said firm, whom your orator prays may be made a party defendant to this bill. And your orator further sheweth, that he has been informed by said Robetaille that he has no interest whatever in the said judgment, or in said note, although the said Robetaille has since pretended that he has some contingent or conditional interest in said note, which he took as collateral security for an extended debt. But your orator expressly charges that said Dameron & Co., in the lifetime of said Dameron, and said Robetaille, since the decease of said Dameron, had or have no interest whatever in said note, or said judgment; that the said Dameron & Co. did not in fact know when said suit was brought; that they, nor either of them, ever saw the said note, or will ever receive any portion of the proceeds should the same be collected, but that said note and said judgment is owned exclusively by said Lea and Langdon, who have instituted suit thereon in the name of Dameron and Co., for no other purpose than fraudulently to prevent your orator and the other parties to the said note from setting up their just defences thereto. Your orator further sheweth, that no writ or process, save the said execution, was ever served upon your orator in the said suit, nor had your orator any notice whatever that said suit had been brought against him, until execution issued as aforesaid; that your orator entered no appearance to said suit, nor filed any plea therein, nor cause the same to be done, nor did any other person, for or on behalf of your orator; and your orator expressly charges that if any solicitor or attorney, authorized to appear and plead in this honorable court, entered such appearance *entered such appearance*, or filed such plea, or made entry which could be construed into an appearance, it was wholly without the privity, knowledge, or consent of your orator; but your orator avers that no appearance was entered, or plea filed for him, and that the entering up of the said judgment against your orator was altogether irregular and without any foundation whatever; all which will more fully appear by the certified transcript of

the record of said suit, under the seal of this honorable court, hereto annexed, marked as exhibit B, and prayed to be taken as part of this bill. Your orator further sheweth, that he never made or signed any note for the sum of five thousand dollars; that he never authorized the said Lea and Langdon to file any note for that amount. And your orator expressly charges, that the filling up the said note with the said sum of five thousand dollars was the fraudulent act of the said Lea and Langdon, contrived and performed to secure themselves against loss on account of the indebtedness of the said Botts to the said Lea and Langdon. But, now so it is, may it please your honor that the said Martin A. Lea and said Charles C. Langdon, combining and confederating with the said Monroe Robetaille, and with divers other persons at present unknown to your orator, whose names, when discovered, your orator prays may be inserted in this, his bill of complaint, with apt words to charge them as parties thereto, to injure and aggrieve your orator in the premises, have caused a levy to be made on the property of your orator, under said judgment and execution, and are now endeavoring to coerce your orator, by the sale of his property, into payment of the said judgment, and costs of said suit; all which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator. In tender consideration whereof, and inasmuch as your orator is without remedy by the strict rules of the common law, and can only obtain adequate relief in a court of equity, where matters of this kind are properly cognizable and relievable. To the end, therefore, that the said Charles C. Langdon, Martin A. Lea, and Monroe Robetaille, and their confederates, may, upon their several and respective corporal oaths, true, full, direct, and perfect answer make to all and singular the matters and things herein before stated and charged, and that as fully, directly, completely, and particularly, as if each allegation were here again repeated, and they particularly and specifically interrogated thereto, and that they shall so answer, not only to the best of their respective knowledge and remembrance, but also to the best of their several and respective hearsay, information, and belief; and especially that said Martin A. Lea and Charles C. Langdon may answer and say why they did not deliver said note to said Botts when he called on them for the same; where the said note at that time was? Where they found the said note, and when? At what particular time they filled the said note for five thousand dollars, and why they so filled it? When they first exercised ownership over said note? What was the state of accounts between said Lea and Langdon and said Botts, when said note was first delivered to them? What was the state of said accounts when said note matured? Whether the said note was filled with the sum of five thousand dollars before or after said Botts requested the same to be re-delivered to him? Was it so filled when it was afterwards found? Who so filled it? Who directed suit to be brought on said note? To whom was the attorney's receipt for the same given? If to Dameron and Co., was it not so made to give jurisdiction to the circuit court of the United States for the southern district of Alabama? Who owned the note

when the suit was brought? Whether Lea and Langdon have not acknowledged that they controlled said judgment? That said Martin A. Lea and Charles C. Langdon, and Monroe Robetaille may answer and say what interest Dameron and Co. had in the said note when suit was brought thereon? What was the consideration paid for that interest? Was any money paid for it, or was it transferred as collateral security for an antecedent debt? Was it transferred to Dameron and Co. before or after its maturity? At what time said Dameron and Co. first acquired an interest in said note? When they first learned that suit had been brought thereon, and who communicated the fact to Dameron and Co.? What was said in that communication? And that the said Monroe Robetaille, Martin A. Lea, Charles C. Langdon, and the attorneys who brought the said suit, may be forever enjoined from further proceedings on said judgment and execution, and that the said judgment may be set aside and cancelled as against your orator, and that your orator may be exempted from all costs on account of said suit, and that a new trial may be granted, if it shall appear that the said Monroe Robetaille is the bona fide holder of said note, and took the same for a valuable consideration, at the time and before the maturity thereof; and if he be not the bona fide holder of said note, and took the same after its maturity, and as collateral security, then that he be perpetually enjoined from proceeding on said judgment and execution, and that your orator may have such other and further relief as to your honors may seem just and equitable, and the circumstances of the case may require. May it please your honors to grant to your orator, not only the most gracious writ of injunction, issuing out of and under the seal of this honorable court, directed to the said Martin A. Lea, Charles C. Langdon, Monroe Robetaille, and the said attorneys, to restrain them from further proceeding on said judgment and execution against your orator, but also the most gracious writ of subpœna, to be directed to the said Martin A. Lee, Charles C. Langdon, and Monroe Robetaille, commanding them, at a certain day, and under a certain penalty, therein to be limited, personally to be and appear before your honors in this honorable court, exercising chancery jurisdiction, and then and there full and direct and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such other and further order and decree, as to your honors may seem meet, and your orator shall ever pray.

DUNN & LESESNE, *Compl't's Sol'rs.*

STATE OF ALABAMA, *Wilcox County:*

Personally appeared before me, S. W. Portis, a justice of the peace in and for said county, Enoch S. Kelly, who being duly sworn, on oath saith, that the allegations of the above bill, so far as made upon his own knowledge, are true; and so far as made upon information derived from others, are correctly stated according to such information, and he believes them to be true.

ENOCH S. KELLY.

Sworn to and subscribed before me, this first day of February, A. D. 1839.

S. W. PORTIS, *J. P.*

(A)—*A.*

Whereas George W. Botts, of Wilcox county, is indebted to Martin A. Lea and C. C. Langdon, of the county and city of Mobile, in the sum of twelve thousand dollars. Now, therefore, for the purpose of securing the said Martin A. Lea and C. C. Langdon in the true and faithful payment of the said sum of twelve thousand dollars on the first day of November next, after the date of these presents, the said Botts has transferred, sold, aliened, and conveyed to the said Lea and Langdon, to be delivered on the first day of November next, the following named slaves, to wit: Harry, a negro man, aged thirty-five years, worth twelve hundred dollars; Bob, a negro man, aged thirty-five, worth twelve hundred dollars; Jeff, a negro man, aged thirty-five, worth one thousand dollars; Lorena, a negro woman, about thirty-five years of age, worth nine hundred dollars; Polly, John, Courtney, and Minerva, children of said Lorena, worth four hundred a piece; Leo, a negro boy, fifteen years old, worth one thousand dollars; Bob, called little Bob, worth twelve hundred dollars; Harriet, a negro girl, eighteen years old, worth nine hundred dollars; Lucy, a negro woman, and her child, Lewis, worth twelve hundred dollars; Gabriel and his wife Jenny, worth twenty-three hundred dollars; Sam, a negro, eight years old, worth four hundred dollars; which said negroes the said Lea and Langdon are hereby authorized and empowered to take possession of, and sell, so soon as they may think fit, after the first day of November next, upon giving ten days' notice of the time and place of sale; said negroes not to be sold upon a longer time than ninety days; said negroes to remain in the possession of said George W. Botts until the said first day of November next; and should the said Botts pay the said debt by the first day of November next, then the above obligation to be void, and of no effect; and should he pay any part thereof, then he to have credit therefor, and only so many negroes to be given up and sold as may be sufficient to pay the balance.

Given under my hand and seal, this second day of March, A. D. eighteen hundred and thirty-seven.

G. W. BOTTS.

Signed, sealed and delivered in the presence of
ROBERT H. GREGG.

Let an injunction issue, agreeably to the prayer of the petitioner, upon his executing his bond, with good and sufficient security, in the penal sum of double the amount of the judgment at law, conditioned to abide and perform the decree of the court in the premises.

WM. CRAWFORD,
Judge of the U. S. for the N. & S. Districts of Alabama.

B.

Pleas had before the hon. the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, at a term thereof begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before their Honors John McKinley, presiding judge, and William Crawford, judge of said court.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, Augustus L. M. Dameron and Monroe Robetaille sued out of said court their writ of capias ad respondendum against William D. Scull, George W. Botts, and Enoch S. Kelly, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,

Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama.

DAMERON & Co.
vs.
WM. D. SCULL et al. } 492.

The President of the United States to the Marshal of said District, greeting:

You are hereby commanded to take the bodies of William D. Scull, George W. Botts, and Enoch S. Kelly, who are citizens of the State of Alabama, and them safely keep, so that you have them before the hon. the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of April next, to answer unto Augustus L. M. Dameron and Monroe Robetaille, partners, using the name and style of Dameron & Co., who are citizens of the State of Louisiana, in a plea of trespass on the case, to their damage ten thousand dollars. Herein fail not, and have you then and there this writ.

Witness, the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of [SEAL.] said circuit court, this 29th day of March, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the 29th day of March, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest: DAVID FILES,
Clerk So. Dist. Ala.

This action is founded on a note made by defendants, in favor of Andrew Armstrong, cashier, or bearer, five thousand dollars, dated

Wilcox county, April 1st, 1836, at eleven months, negotiable and payable at the branch of the bank of the State of Alabama, at Mobile.

GORDON, CAMPBELL & CHANDLER,
Plaintiff's Attorneys.

Rec'd 29th March, and served 30th March, 1837, on W. D. Scull and George W. Botts—E. S. Kelly not found.

R. S. CRAWFORD, *U. S. Marshal.*
By A. BROOKS, *D. M.*

And afterwards, to wit, at a term of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven, the plaintiffs filed the following declaration, to wit:

Declaration.

CIRCUIT COURT OF THE UNITED STATES,
For the Ninth Judicial Circuit, Southern District of Alabama, April Term, 1837.

Augustus L. M. Dameron and Monroe Robetaille, partners, under the firm of Dameron & Co., who are citizens of the State of Louisiana, by attorney, complain of William D. Scull, George W. Botts, and Enoch S. Kelly, who are citizens of the State of Alabama, in custody, &c., of a plea of trespass on the case; for that, whereas, heretofore, to wit, at Wilcox county, Alabama, on the first day of April, 1836, the said defendants executed to the said plaintiffs, by the name of bearer, their certain promissory note, in writing, bearing date the day and year aforesaid, and thereby, then and there, eleven months after the date thereof, they, William D. Scull, George W. Botts, and Enoch S. Kelly, jointly and severally, promised to pay the plaintiffs, by the name and description of Andrew Armstrong, Esq., cashier, or bearer, five thousand dollars, for value received, negotiable and payable at the branch of the bank of the State of Alabama, at Mobile. By means whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay to the said plaintiffs the said sum of money in the said promissory note specified; and, being so liable, they, the said defendants, in consideration thereof, afterwards, to wit, on the day and year aforesaid, undertook and faithfully promised the said plaintiffs, to pay them the said sum of money in the said promissory note specified, according to the tenor and effect thereof. Yet the said defendants, although often requested, have not yet paid to the said plaintiffs the said sum of money in the said promissory note specified, or any part thereof; but to pay the same or any part thereof have hitherto wholly neglected and re-

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fused, and still do neglect and refuse so to do, to the damage of the said plaintiffs ten thousand dollars; and therefore they bring suit.

GORDON, CAMPBELL & CHANDLER,
Plaintiff's Attorneys.

Whereupon, at the same term, the defendants, Botts and Scull, filed their plea, in the words and figures following, to wit:

Plea.

CIRCUIT COURT UNITED STATES,
April Term, 1837.

And the said defendants, Botts and Scull, by Stewart, Thornton & Easton, their attorneys, come and defend the wrong and injury, when, &c.; and say, that they did not undertake or promise in manner and form as the said plaintiffs have above complained against them; and of this the said defendants put themselves upon the country.

STEWART, THORNTON & EASTON,
For Defendants.
SCULL & BOTTS.

And afterwards, to wit, at a term of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before their Honors John McKinley, presiding judge, and William Crawford, judge of said , the following proceedings were had, to wit:

(The plaintiffs' action abates as to A. L. M. Dameron.)

Judgment.

This day came the plaintiff, by his attorneys, and the defendants, having withdrawn their plea, say nothing in bar or preclusion of said plaintiff's action, whereby the said plaintiff therein against them remains altogether undefended; it is therefore considered by the court that the said Monroe Robetaille, plaintiff, do recover against the said William D. Scull, George W. Botts, and Enoch S. Kelly, defendants, the sum of five thousand four hundred and fifty-one dollars, for their damages, as assessed by the clerk of this court, together with their costs.

Whereupon, afterwards, to wit, on the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and thirty-eight, the following writ of fieri facias was issued from the clerk's office of said court, to wit:

Fieri Facias.

UNITED STATES OF AMERICA,

Circuit Court of the United States for the ninth judicial circuit and southern district of Alabama.

The President of the United States to the Marshal of said District, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements of William D. Scull, George W. Botts, and Enoch S. Kelly, late in said district, you cause to be made the sum of fifty-four hundred and fifty-one dollars, with interest thereon, from the 16th day of April, A. D. 1838, which Monroe Robetaille, at a term of said circuit court, begun and held on the second Monday of April, 1838, has recovered against them for damages; also the sum of thirty-eight dollars, which to the said Monroe, in the same court, were adjudged for costs and charges in that behalf expended, whereof the said William D. et al. are convicted, as appears of record; and that you have the said sums of money before the said circuit court, on the second Monday of October next, at the place of holding said court, at Mobile, to render to the said Monroe of the damages and costs aforesaid, and have you then and there this writ.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued the 29th day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest: DAVID FILES,
Clerk So. Dist. Ala.

Rec'd May 29, '38—No property found.
R. S. CRAWFORD, *U. S. M.*
By D. WHITE, *D. M.*

Service and mileage, $13.

I, David Files, clerk of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, do hereby certify that the beforegoing three pages contain a full, true and perfect exemplification of the record and proceedings in a certain cause lately determined in said court, wherein Augustus L. M. Dameron and Monroe Robetaille were plaintiffs, and William D. Scull and others were defendants.

In witness whereof, at office in the city of Mobile, I have hereunto set my hand and affixed the seal of said circuit court, this eleventh day of January, in the year of our Lord one thousand eight hundred and thirty-nine. [SEAL.]

DAVID FILES,
Clerk So. Dist. Ala.

Bill filed and supersedeas issued, 7th February, 1839.
DAVID FILES, *Clerk.*

UNITED STATES OF AMERICA,
Circuit Court of the United States, for the Ninth Judicial Circuit, Southern District of Alabama.

Know all men by these presents that we, Enoch S. Kelly, John W. Kelly, John Kelly, and William Philan, of county, and State of Alabama, are held and firmly bound unto Monroe Robetaille, surviving partner of the firm of Dameron, & Co., in the full sum of ten thousand nine hundred and two dollars, to be paid to the said Robetaille, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we, and each of us do bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents; sealed with our seals, and dated this *seventh* day of *February* A. D. eighteen hundred and thirty-nine.

Now the condition of the above obligation is such, that, whereas the above-named Monroe Robetaille, surviving partner, as aforesaid, hath obtained a judgment in the circuit court aforesaid, against the said Enoch S. Kelly, Wm. D. Scull, and George W. Botts, for the sum of five thousand four hundred and fifty-one dollars, besides costs; and whereas his honor, William Crawford, hath ordered that an injunction issue upon the complainants, entering into bond with sufficient security, &c.: now, therefore, if the said Enoch S. Kelly, or his said sureties shall well and truly pay and satisfy, unto said Monroe Robetaille, the above judgment and costs, and all costs and damages incurred, or to be incurred in this behalf, and shall perform and abide such decree as the said circuit court may make in the premises, then this obligation to be void, otherwise to be and remain in full force and effect.

ENOCH S. KELLY, [SEAL.]
JOHN W. KELLY, [SEAL.]
JOHN KELLY, [SEAL.]
WILLIAM PHILAN. [SEAL.]

Personally appeared before the undersigned, David Files, clerk of the circuit court of the United States for the ninth judicial circuit for the southern district of Alabama, Robert H. Gregg, who being sworn, oath, saith that he believes that Enoch Kelly, John W. Kelly, John Kelly, and William Philan, are solvent, and good for ten thousand dollars.

ROBERT H. GREGG.

Sworn to and subscribed before me, David Files, clerk, as aforesaid, this 7th day of February, 1839.

And afterwards, to wit, on the seventh day of February, in the year of our Lord one thousand eight hundred and thirty-nine, the following writ of subpœna was issued from the office of the clerk of said court, to wit:

United States of America, Circuit Court of the United States for the ninth Judicial Circuit, Southern District of Alabama—the President of the United States, to the marshal of said district, greeting:

You are hereby commanded to summon Martin A. Lea, Charles C. Langdon, Monroe Robetaille, and Gordon, Campbell and Chandler, their attorneys, if to be found in your district, to be and appear before the honorable the circuit court aforesaid, at the place of holding said court at Mobile, on the second Monday of April next, to answer unto the bill of complaint of Enoch S. Kelly, filed in the clerk's office of said court, February 7th, 1839, praying an injunction, &c. Herein fail not, and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of said circuit [SEAL.] court, this second Monday of October, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued the 7th day of February, in the year of our Lord one thousand eight hundred and thirty-nine.

Attest: DAVID FILES,
Clerk So. Dist. Ala.

Received 7th February, 1839, and executed on Gordon, Campbell, and Chandler, Martin A. Lea, and Charles C. Langdon, all same day, 7th February, 1839.

R. L. CRAWFORD, *U. S. M.*
By C. CUYLER, *D. M.*

And afterwards, to wit, at a term of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, begun and held in and for said district at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-nine, the defendants, Martin A. Lea and Charles C. Langdon, filed the following answer to the said bill of complaint, to wit:

Answer.

The joint and several answers of Martin A. Lea, and Charles C. Langdon, to the bill of complaint of Enoch S. Kelly, filed in the circuit court of the United States against them: these defendants, reserving to themselves the benefit of all exceptions to the many untruths, insufficiencies, errors, inaccuracies in the bill of complaint contained, for answer thereto, or so much thereof as they are advised it is material for them to answer, answering, say: That it is true that the said defendant held a note of the complainant of the amount, date, and form set forth in the bill of complaint. It is true that a suit has been prosecuted on said note, and a judgment recovered; it is true that a transcript of the record is attached to the said bill, but the said complainants state, that on the record of appearances, and on the re-

cord on the trial docket of said court, there is a special appearance by Stewart, Thornton, and Easton, for the said Botts and Scull, and a general appearance by Messrs. Gayle, Van De Graff, and Saffold, for the defendants in the said cause; and these defendants say that by an agreement with the said Botts, a judgment was to have been taken on said claim at the spring term of 1837, but the attorneys for the other defendants then and there wholly refused, and thus was the cause postponed for a hearing until the spring term of 1838. These defendants do not know by what authority these appearances were entered, nor who required the said attorneys to appear in the cause; but this they do know, that if the said judgment had been taken in conformity with the agreement of Botts, in the said cause, that these defendants would not have been driven to a recourse against said complainant. That the said attornies did interfere to prevent a judgment against the other parties, and made a postponement necessary. These defendants say that the said note was delivered to these defendants in the spring of 1836; that at the time it was delivered, the said defendants had made advances and come under acceptances for him to a large amount, and were applied to for additional credit and advances for and on his account. They state that in the latter part of winter, or early in the spring, that said Botts proposed, upon consideration of these advances and additional credits, to give to these defendants paper, such as they could use in bank, and procure forms of the notes in use at the branch bank. These forms the said Botts brought with the names of the parties to the same, and stated that they were to be filled for the sum of $5,000. These defendants say that the sum for which the notes were filled was specified by said Botts; that he made no declaration of any instructions or restrictions upon his authority. That the defendants were not privy to any of the instructions stated in the bill, and they deny all connection with any fraud, deceit, artifice, or circumvention of the said complainant, or said Scull: these defendants deny that the proceeds of the notes at bank would have been credited to said Scull, or that they would, in any manner, have been placed under the control of either of them. On the contrary, these defendants state that the clear and distinct understanding between said Botts and these defendants was, that the proceeds of said notes, if discounted in bank, should be used by the defendant in protecting their liabilities on account of the said Botts, and in reimbursing the advances they had made for him. They state that the notes were placed in the hands of these defendants as their property, to be used in bank, if possible; that they should be used in bank was the wish of these defendants; but this expectation did not impair their rights or interest in the said paper, they having incurred obligations and given credits more than equal to its value. The said note was not discounted at bank in consequence of the said Botts being under protest. These defendants deny that this note was a mere security for an antecedent debt, but as their account exhibits, they gave new and additional credit to the said Botts after the said note came to their

possession, and that they advanced money for him; and these defendants state that this note was given to them as property, to meet the liabilities they had and were incurring on the same account. These defendants deny that they had any knowledge, information, or suspicion of any instructions or agreements between the parties to the same; that they had no knowledge or information, nor of any fact that could lead them to surmise that there was any breach of trust on the part of the said Botts to the said Scull and Kelly; but on the contrary, these defendants say that the said Botts was in excellent credit, in the possession of a handsome estate, carrying on extensive plans for its improvement, and that in the times of trust and confidence, such as prevailed in the spring of 1836, no person would have thought of asking a question in regard to the paper he held, or the mode of its acquisition. These defendants say that the form of the paper was common and usual; that it was frequently employed by those who wished to use credits through the bank, and that it gave no intimations to the holder of the terms upon which it was made. These defendants say that they esteemed it as a valid and operative security, and as such gave Botts credit by advancing money and incurring liabilities upon the same, all of which will fully appear by the account of said Botts, hereunto attached and marked A. These defendants say, that in the spring of 1837, after their suspension, the said Martin A. Lea visited Wilcox county with a view of effecting a settlement with said debt, and securing himself from liability on his account; that at the time the said Botts owed these defendants the sum of thirteen thousand three hundred dollars on general account, for which these defendants had the note of Botts, with Skull and Gregg as parties, the note described in complainant's bill, and the balance on account. That in addition to this they were liable on a bill held by J. D. Beers & Co., upon which suit was instituted for $6,363 72, due in December 1836, on which they were acceptors; a draft held by Samuel St. John, for $954 due in January 1837, on which they were acceptors—in each case for the accommodation of Botts. That the defendants were alarmed, and proposed to said Botts to give them security; that Botts, to secure the claim not then secured, gave them the lien on the slaves as stated in the bill of complaint, and promised to secure the balance of the demand by a mortgage on lands that were designated. These defendants say that these conversations were had in Wilcox county, and that the lien on the slaves was there taken, and taken without reference to the books of these defendants, to ascertain the precise debt, and without reference to an attorney to give a technical accuracy to the deed; that the arrangements were not brought to a consummation, but that the said Botts promised to come to Mobile, and there effect the whole arrangement. This defendant says he came to Mobile, and did make an arrangement with Beers and St. John, by which these defendants were discharged from their liability. These defendants say, that the said Botts refused to make such arrangements, unless the defendants would surrender their claim upon the slaves; and that these defendants, regarding the slaves

as a mere precarious security, obtaining a certain and definite relief, agreed to the same, and on the execution of their papers, surrendered to said Botts said paper. But these defendants deny that the bill of sale was intended to form a security for this demand, or that they discharged any security, either by giving to Botts the bill of sale, or accepting his offers. These defendants state their anxiety was principally on account of the debt not secured, and the acceptances on which the holders of the bills had brought their suits, and that for these the said security was taken, and that the said Botts did refuse to give the securities specified before. These defendants deny that said Botts ever made repeated enquiries for said note, and that said defendants said it was lost, mislaid, or in bank, or that the same should not come against the parties, or any words of the like description; and they deny that they used pretences to avoid the delivery of the note, and they deny that they intimated or manifested any doubt of their title to the note, but, on the contrary, these defendants have always regarded the said note as an available security, and have constantly so spoken of it; and these defendants deny that the existence of the said notes was concealed, or that the said defendants suppressed any facts in regard to the same, that the said Botts ought to have known. These defendants, about the time that suit was brought upon the claims in the name of Dameron & Co., transferred the same to the said Dameron & Co., in full payment of a debt due from them to the said firm. But that the said Dameron & Co. subsequently complained of the collection being slow, and that their expectations had not been met, exchanged the papers for the notes of these defendants, whereby all interest in the judgments became invested in them, and they are prosecuted for their benefit; these defendants say that the arrangements for a transfer of the said paper were made with Butler and Harris before the suits were brought, who were then the agents for said Dameron & Co., and that the property in the notes bona fide passed, and that they have examined the books of their attorneys, and find them entered to the credit of the said Dameron & Co. These defendants say that the whole transaction was real, substantial, bona fide transfer, in payment of debts acknowledged to be due, and not in fraud of the jurisdiction of this court, and that the entire interest in the paper remained in said Dameron & Co., until the spring of 1838, when Monroe Robetaille complained of the tardiness in the collection, and that a greater delay was anticipated than he had a right to expect from the said defendant's representations. They gave him their notes for the debt, and became interested in the paper.

These defendants say they have no receipt from their said attorney, and presume if any was taken it was delivered to Dameron & Co.; that they do not recollect who gave the notes in the hands of the attorneys, whether Butler & Harris or themselves, but the arrangement was made with them and ratified by Dameron & Co. These defendants deny all manner of fraud, combination, and confederacy with which they are charged, and prayed to be dismissed with their costs.

GORDON, CAMPBELL, & CHANDLER,
For Defendants.

THE STATE OF ALABAMA, *Mobile County:*

Before me, a justice of the peace for said county, came Martin A. Lea and Charles C. Langdon, who made oath that the matters contained in this answer are true.

MARTIN A. LEA,
CHARLES C. LANDON.

Sworn to and subscribed before me, April 6, 1839.
J. W. JEANERELLE, *J. P. M. C.*

A.

Mr. Geo. W. Botts in account current and interest with Lea & Langdon. DR.

1835.		
Dec. 22,	For acc. dft. St. John, due 20, 23d February, 1836, - -	$5,000 00
22,	For acc. dft. St. John, due 22, 25 April, 1836, -	3,000 00
1836.		
	For com. for accepting 2½ p. c., - - -	200 00
Jan. 13,	For acc. dft. your order due 13, 16 March, 1836, -	6,000 00
13,	For com. for accepting 1¼ p. c., - - -	75 00
15,	For acc. dft. Goodman & Miller, due 13, 16 March, 1836, - - -	2,175 00
15,	For com. for accepting 2½ p. c., - - -	54 37
18,	For acc. dft. W. Lochlin, due 19, 22 March, 1836,	185 00
18,	For com. for accepting 2½ p. c., - - -	4 12
21,	For cash paid your note, -	75 29
21,	For com. for advanc'g 5 p. c.,	3 76
Feb. 23,	For com. " dft. this day $5,000, *a* 2½ p. c.,	125 00
April 16,	For cash paid insurance on cotton, - -	18 50
May 18,	For do do your note,	4,210 52
18,	For do do do., -	4,210 53
18,	For com. for advancing 5 p. c.	421 05
June 9,	For interest on ac. to date,	196 37
9,	For do on $4,105 20 for 30 days, - -	27 36
9,	For interest on $4,087 19 for 60 days, - -	54 49

June	9,	For interest on $4,282 63 for 90 days, - -	$85 45	
				$26,122 01

CR.

1836.				
March	14,	By proceeds 16 bales cotton,	$1,240 49	
	16,	By cash on account, -	8,000 00	
	16,	By your note due July 5, 8, 1836, - - -	4,239 00	
	16,	By do do July 9, 2, 1836, - - -	4,132 56	
	16,	By do Aug. 8, 11, 1836, - - -	4,141 68	
	16,	By do Sep. 7, 10, 1836, - - -	4,368 28	
				$26,122 01

Mr. Geo. W. Botts to Lee & Langdon. DR.

1836.				
July	8,	For cash paid your note due this day, - -	$4,239 00	
	12,	For do do do -	4,132 56	
Aug.	11,	For do do do -	4,141 68	
Sept.	10,	For do do do -	4,368 28	
	10,	For do on account of our draft, - -	4,517 00	
	10,	For com. for advancing do		
1837.		5 p. c., - - -	225 85	
Jan.	26,	For cash paid your draft on Brodnux & Newton, -	3,102 00	
April	17,	For com. for acc'g. dft. to St. John, due Dec. 22, 25, 1836, $6,363 $\frac{72}{100}$, *a* 2½ p. c., - -	161 09	
		For com. for accg. dft. due January 11, 14, 1837, $954, *a* 2½ p. c., -	23 85	
		For interest to date, -	747 37	
				$25,658 68

CR.

1836.				
July	6,	By proceeds of dft. on you, $4,517, - -	$4,192 50	
		By your dft. on J. Anstell, due Feb. 23, 26, 1837, -	2,500 00	
		By do do March 5, 8, 1837, - -	2,500 00	

THE STATE OF ALABAMA, *Mobile County:*

Before me, a justice of the peace for said county, came Martin A. Lea and Charles C. Langdon, who made oath that the matters contained in this answer are true.

MARTIN A. LEA,
CHARLES C. LANDON.

Sworn to and subscribed before me, April 6, 1839.
J. W. JEANERELLE, *J. P. M. C.*

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